

1 Steve W. Berman (*Pro Hac Vice*)
2 HAGENS BERMAN SOBOL SHAPIRO LLP
3 715 Hearst Avenue, Suite 202
4 Berkeley, CA 94710
5 Telephone: (510) 725-3000
6 Facsimile: (510) 725-3001
7 steve@hbsslaw.com

8 Elizabeth J. Cabraser (State Bar No. 083151)
9 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
10 275 Battery Street, 29th Floor
11 San Francisco, CA 94111-3339
12 Telephone: (415) 956-1000
13 Facsimile: (415) 956-1008
14 ecabraser@lchb.com

15 Adam Zapala (State Bar No. 245748)
16 COTCHETT, PITRE & McCARTHY, LLP
17 840 Malcolm Road
18 Burlingame, CA 94010
19 Telephone: (650) 697-6000
20 Facsimile: (650) 697-0577
21 azapala@cpmlegal.com

22 *Indirect Purchaser Plaintiffs*
23 *Interim Co-Lead Class Counsel*

24 [Additional Counsel Listed on Signature Page]

25
26
27
28
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

29
30 IN RE LITHIUM ION BATTERIES
31 ANTITRUST LITIGATION

32 Case No. 4:13-md-02420 YGR (DMR)

33 MDL No. 2420

34
35 This Document Relates to:
36
37 ALL INDIRECT PURCHASER
38 ACTIONS

39
40 **INDIRECT PURCHASER PLAINTIFFS'**
CORRECTED SECOND RENEWED
MOTION FOR CLASS CERTIFICATION

41 Date: November 6, 2018

42 Time: 2:00 p.m.

43 Judge: Hon. Yvonne Gonzalez Rogers

44 Court: Courtroom 1, 4th Floor

45
46 Date Action Filed: October 3, 2012

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on November 6, 2018, at 2:00 p.m., or as soon thereafter as the matter may be heard by the Honorable Judge Yvonne Gonzalez Rogers of the United States District Court for the Northern District of California, Oakland Division, located at 1301 Clay Street, Oakland, CA 94612, Indirect Purchaser Plaintiffs (“IPPs”) will and hereby do move for an order certifying the following classes of persons and entities pursuant to Federal Rule of Civil Procedure 23(b)(3) and under California law.

First, IPPs move for certification of the following class of persons and entities (the “Consumer Class”):

All persons and entities who, as a resident of Alabama, Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin who, during the period from January 1, 2007 through May 31, 2011, indirectly purchased, new for their own use and not for resale, one of the following products containing a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; or (ii) a replacement battery for a portable computer. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

IPPs also move for certification of the following class of government entities (the “California Government Entity Class”):

All non-federal and non-state governmental entities in California that, during the period from January 1, 2007 through May 31, 2011, indirectly purchased, new for their own use and not for resale, one of the following products containing a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; or (ii) a replacement battery for a portable computer. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal or state governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

Second, IPPs move to appoint the following plaintiffs as class representatives for the Consumer Class: Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steven Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Linda Lincoln,

1 Patrick McGuinness, Joseph O'Daniel, Piya Robert Rojanasathit, Bradley Seldin, David Tolchin,
2 and Bradley Van Patten. IPPs move to appoint the following plaintiffs as class representatives for
3 the California Government Entity Class: the City of Palo Alto and the City of Richmond.

4 Third, IPPs move to appoint Hagens Berman Sobol Shapiro LLP; Lieff Cabraser Heimann
5 & Bernstein, LLP; and Cotchett, Pitre & McCarthy, LLP as Co-Lead Class Counsel for both the
6 Consumer Class and the California Government Entity Class.

7 This motion is based on this notice of motion and motion, the following memorandum of
8 points and authorities, the previous papers submitted in support of class certification, and all
9 accompanying declarations and exhibits, the pleadings and the papers on file in this action, oral
10 argument, and such other matters as the Court may consider in hearing this motion.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1

TABLE OF ABBREVIATIONS

2	Class Cert. Mot. I	IPPs' Motion for Class Certification, filed under seal (Jan. 22, 2016), ECF No. 1036
3	Class Cert. Opp'n II	Defendants' Opposition to IPPs' Renewed Motion for Class Certification, filed under seal (Oct. 24, 2017), ECF No. 2000-2
5	Class Cert. Reply II	IPPs' Reply in Support of Renewed Motion for Class Certification, filed under seal (Nov. 21, 2017), ECF No. 2044-1
7	Class Cert. Order I	Order Denying Without Prejudice Motion for Class Certification; Granting in Part and Denying in Part Motions to Strike Expert Reports or Portions Thereof (Apr. 12, 2017), ECF No. 1735
9	Class Cert. Order II	Order Denying IPPs' Renewed Motion for Class Certification; Granting Motion to Strike Expert Report of Edward E. Leamer, Ph. D. (Mar. 5, 2018), ECF No. 2197
11	Haider I	Declaration of Laila Haider, Ph.D., in Support of Defendants' Opposition to Indirect Purchaser Plaintiffs' Renewed Motion for Class Certification and Defendants' Motion to Exclude the Proposed Expert Testimony of Dr. Edward E. Leamer (Oct. 24, 2017), filed under seal as Exhibit 62 to the Corrected Sheen Declaration
14	Haider III	Expert Rebuttal Report of Dr. Laila Haider to Dr. Edward E. Leamer (Jun. 15, 2018), filed concurrently herewith
15	Leamer I	Corrected Expert Report of Edward E. Leamer, Ph.D. (Feb. 2, 2016), filed under seal as Exhibit 58 to the Corrected Sheen Declaration
17	Leamer II	Expert Reply Report of Edward E. Leamer, Ph.D. (Aug. 23, 2016), filed under seal as Exhibit 59 to the Corrected Sheen Declaration
19	Leamer III	Supplemental Expert Report of Edward E. Leamer, Ph.D. (Sept. 26, 2017), filed under seal as Exhibit 60 to the Corrected Sheen Declaration
21	Leamer IV	Supplemental Expert Reply Report of Edward E. Leamer, Ph.D. (Nov. 21, 2017), filed under seal as Exhibit 61 to the Corrected Sheen Declaration
23	Leamer V	Expert Report of Edward E. Leamer, Ph.D. (May 25, 2018), filed concurrently herewith
25	Leamer VI	Expert Reply Report of Edward E. Leamer, Ph.D. (June 29, 2018), filed concurrently herewith
26	Corrected Sheen Decl. Ex.	Exhibits to the Corrected Declaration of Michael K. Sheen in Support of Indirect Purchaser Plaintiffs' Second Renewed Motion for Class Certification, filed concurrently herewith

TABLE OF CONTENTS

2	STATEMENT OF ISSUES TO BE DECIDED	iii
3		
4	I. INTRODUCTION	1
5	II. FACTUAL BACKGROUND OF THE CARTEL.....	4
6	III. PROCEDURAL BACKGROUND.....	6
7	A. First Class Certification Order	6
8	B. Second Class Certification Order.....	7
9	IV. LEGAL STANDARD.....	8
10	V. ARGUMENT	8
11	A. Dr. Leamer’s Prior Regression Analyses Show Consumers in the Narrowed Class Were Harmed.....	9
12	B. Dr. Haider’s New Opinions Support the Conclusion That Consumers Were Harmed by Defendants’ Collusion.....	14
13	C. Dr. Leamer’s New Analysis and Evidence Addresses This Court’s Concerns About the Effects of Focal Point Pricing.	16
14	1. Identifying Actual Quality Reduction Due to the Conspiracy Is Impossible, But New Analysis Shows Quality and Price Trade-Offs Both In and Out of the Conspiracy and for Batteries Specifically.....	17
15	2. Additional Testimony, Documents, and Data Analysis Strengthen the Overall Evidence of Quality Adjustment as a Response to Focal Point Prices.	21
16	VI. CONCLUSION.....	25
17		

TABLE OF AUTHORITIES

Page	
2	Cases
3	
4	<i>Amgen Inc. v. Conn. Ret. Plans & Tr. Funds</i> , 568 U.S. 455 (2013).....8
5	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998).....9
6	
7	<i>In re Optical Disk Drive Antitrust Litig.</i> , No. 3:10-MD-2143 RS, 2016 WL 467444 (N.D. Cal. Feb. 8, 2016) 21, 22
8	<i>In re Static Random Access Memory (SRAM) Antitrust Litig.</i> , No. C07-01819 CW, 2008 WL 4447592 (N.D. Cal. Sept. 29, 2008) 18
9	
10	<i>In re TFT-LCD (Flat Panel) Antitrust Litig.</i> , MDL No. 1827, 2012 WL 253298 (N.D. Cal. Jan. 26, 2012) 18
11	
12	<i>In re: Cathode Ray Tube (CRT) Antitrust Litig.</i> , No. C-07-5944-SC, 2013 WL 5391159, at *5-8 (N.D. Cal. Sept. 24, 2013)..... 18
13	
14	<i>In re: High-Tech Emp. Antitrust Litig.</i> , 985 F. Supp. 2d 1167 (N.D. Cal. 2013) 17
15	
16	<i>Lambert v. Nutraceutical Corp.</i> , 870 F.3d 1170 (9th Cir. 2017), cert. granted, 138 S. Ct. 2675 (2018) 17
17	
18	<i>Tyson Foods, Inc. v. Bouaphakeo</i> , 136 S. Ct. 1036 (2016).....8
19	
20	<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011).....8

STATEMENT OF ISSUES TO BE DECIDED

1. Whether this Court should certify under Federal Rule of Civil Procedure 23(b)(3) the following class, under California law, of persons and entities who are residents of states that permit indirect purchasers to bring claims (the “Consumer Class”):

All persons and entities who, as a resident of Alabama, Arizona, Arkansas, California, District of Columbia, Florida, Hawaii, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Tennessee, Utah, Vermont, West Virginia, or Wisconsin who, during the period from January 1, 2007 through May 31, 2011, indirectly purchased, new for their own use and not for resale, one of the following products containing a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; or (ii) a replacement battery for a portable computer. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal, state, or local governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

2. Whether this Court should certify under Federal Rule of Civil Procedure 23(b)(3) the following class, under California law, of non-federal and non-state governmental entities in California (the “California Government Entity Class”):

All non-federal and non-state governmental entities in California that, during the period from January 1, 2007 through May 31, 2011, indirectly purchased, new for their own use and not for resale, one of the following products containing a lithium-ion cylindrical battery manufactured by one or more defendants or their co-conspirators: (i) a portable computer; or (ii) a replacement battery for a portable computer. Excluded from the class are any purchases of Panasonic-branded computers. Also excluded from the class are any federal or state governmental entities, any judicial officers presiding over this action, members of their immediate families and judicial staffs, and any juror assigned to this action.

3. Whether this Court should appoint the following plaintiffs as class representatives for the Consumer Class: Jason Ames, Caleb Batey, Christopher Bessette, Cindy Booze, Matt Bryant, Steven Bugge, William Cabral, Matthew Ence, Drew Fennelly, Sheri Harmon, Linda Lincoln, Patrick McGuinness, Joseph O'Daniel, Piya Robert Rojanasathit, Bradley Seldin, David Tolchin, and Bradley Van Patten.

4. Whether this Court should appoint the following plaintiffs as class representatives for the California Government Entity Class: the City of Palo Alto and the City of Richmond.

1 5. Whether this Court should Hagens Berman Sobol Shapiro LLP; Lieff Cabraser
2 Heimann & Bernstein, LLP; and Cotchett, Pitre & McCarthy, LLP as Co-Lead Class Counsel for
3 both the Consumer Class and the California Government Entity Class.

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **I. INTRODUCTION**

2 This case concerns a decade-old cartel organized to inflate the price of cylindrical lithium
 3 ion batteries (“LIBs”). The reality of this case is that the ultimate impact of the price-fixing was
 4 not borne by Taiwanese packers, or huge multinational OEMs, or gigantic big-box retailers. It
 5 landed squarely on the backs of consumers, just as common sense would suggest. According to
 6 the overcharge analysis conducted by Dr. Edward E. Leamer, these consumers (in the proposed
 7 class definitions) suffered [REDACTED] in damages.¹ The following defendants, which now
 8 belong to a single corporate entity, remain in the indirect purchaser case: Panasonic Corporation
 9 and Panasonic Corporation of North America (collectively, “Panasonic”), and Sanyo Electric Co.,
 10 Ltd and Sanyo North America Corporation (collectively, “Sanyo”). One of these defendants,
 11 Sanyo, pled guilty to participating in a criminal conspiracy to fix the price of lithium ion batteries
 12 sold to U.S. consumers and named Panasonic as its co-conspirator.² Trial in this case is
 13 scheduled for January 2019. Because the evidence will be the same regardless of whether this
 14 case is tried on behalf of twenty-three consumers or a class, Indirect Purchaser Plaintiffs (“IPPs”)
 15 make this renewed motion for class certification.

16 Federal Rule of Civil Procedure 23(c)(1)(C) allows that an “order that grants or denies
 17 class certification may be altered or amended before final judgment.” Fed. R. Civ. P. 23(c)(1)(C).
 18 This Court has denied class certification in the indirect purchaser case twice. But IPPs have
 19 pursued additional fact discovery and have undertaken additional economic work that addresses
 20 the concerns expressed by the Court and further weighs in favor of class certification.
 21 Furthermore, this renewed motion is based on narrowed class definitions covering a shorter time
 22 period—January 1, 2007 through May 31, 2011. This time period more closely tracks the guilty
 23 pleas of defendants Sanyo and LG Chem Ltd. (“LG Chem”), and corresponds to the time period
 24 with the greatest record evidence and largest impact on consumers.³ IPPs have additionally

25 ¹ Am. Sheen Decl. Ex. 1 (All Defendant Cylindrical LIB Damages for Notebooks in Class States
 26 2007-2011); *see also* Am. Sheen Decl. Ex. 2 (All Defendant Cylindrical LIB Damages for
 27 Notebooks in Class States Including a 3-month Delay in Pass-Through 2007-2011).

28 ² Am. Sheen Decl. Ex. 39 (Sanyo Plea) at 3-4.

29 ³ *See* Am. Sheen Decl. Ex. 39 (Sanyo Plea) at 3-4 (admitting to price-fixing conspiracy from
 30 April 2007 through September 2008), Ex. 40 (LG Chem Plea) at 3-4 (same).

1 narrowed the proposed class definitions to purchasers of portable personal computers and
 2 replacement batteries—products that defendants LG Chem and Sanyo admitted were the target of
 3 their collusion.⁴ The documentary, testimonial, and econometric evidence show that long-term
 4 price effects of defendants' decade-plus conspiracy harmed all or nearly all class members.

5 Pass-Through via Price and Quality. Dr. Leamer's merits reports pursuant to Federal Rule
 6 of Civil Procedure 26 synthesize additional record evidence and econometric analysis to show
 7 that pass-through occurred at the OEM level in the form of *both* increased prices and reduced
 8 quality. This evidence includes:

- 9 • [REDACTED]
- 10
- 11
- 12
- 13 • [REDACTED] 6
- 14
- 15 • [REDACTED] 7
- 16
- 17
- 18 • [REDACTED] 8 [REDACTED]
- 19
- 20
- 21 • [REDACTED] 9

22 This new evidence and Dr. Leamer's new econometric and other analyses address the concerns
 23 raised by the Court in its Second Class Certification Order, and confirm what economic theory

24 _____
 25 ⁴ See Am. Sheen Decl. Ex. 39 (Sanyo Plea) at 4, Ex. 40 (LG Chem Plea) at 3.

26 ⁵ Leamer V ¶ 30. Additional, similar testimony is discussed in Section V.C.2, *infra*.

27 ⁶ Leamer V ¶¶ 46, 50-51, 59-60, fig.5.

28 ⁷ Leamer V ¶¶ 50-66, figs.2-8.

⁸ Leamer V ¶¶ 67-75, figs.9-11.

⁹ Leamer V ¶¶ 76-78, fig.12.

1 holds: focal point prices do not result in prices that defy the nature of competitive markets. In
 2 other words, retail-level focal point pricing does not allow OEMs or retailers to earn more or less
 3 of a profit margin (than they would have without a battery overcharge) because OEMs and
 4 retailers do not have the market power to do so. The narrowed class definition, which includes
 5 only purchasers of portable computers from 2007 to 2011, further weakens defendants' argument

6 that [REDACTED]¹⁰ [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED].¹¹

10 Furthermore, this case is about a decade-plus conspiracy that started many years before the
 11 narrowed class period, eliminating any concern about the time it might have taken for the effect
 12 of higher cell prices to work their way down the distribution chain.

13 [REDACTED]. Defendants' own expert, Dr. Laila
 14 Haider [REDACTED]

15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]¹² [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]¹³ [REDACTED]
 22 [REDACTED]

23
 24
 25¹⁰ Haider III ¶ 21. *See* Class Cert. II Opp'n at 5-11.

26¹¹ Am. Sheen Decl. Ex. 4 (Damages per Notebook Including a 3-month Delay in Pass-Through);
 27 *see also* Am. Sheen Decl. Ex. 3 (Damages per Notebook).

¹² Haider III ¶ 43.

28¹³ Am. Sheen Decl. Ex. 5 (Dell Pack Cost Pass-Through), Ex. 9 (Leamer Dep.) 792:16-23, 859:3-
 860:14, 863:9-867:23, 968:17-971:11; *see also* Haider III tbl. F-5.

1 Defendants' Arguments Reflect a Misunderstanding of the Consumer Electronics Market
 2 and the Class Certification Inquiry. Defendants' attack on IPPs' evidence requires viewing the
 3 issue through the narrowest of lenses: [REDACTED]

4 [REDACTED] [REDACTED]¹⁴ However,
 5 when it comes to OEM pass-through and focal point prices, IPPs do not contend—and have never
 6 contended—that the market would instantaneously and uniformly pass through an isolated \$1
 7 increase in the price of batteries. That is not the relevant inquiry. What IPPs contend, and what
 8 the evidence overwhelmingly shows, is that OEMs could have and would have passed on to
 9 consumers the [REDACTED] in global price impact caused by the cartel over its decade-plus
 10 existence. As Dr. Leamer explained, [REDACTED]

11 [REDACTED]
 12 [REDACTED]¹⁵ Defendants
 13 disagree.¹⁶ Regardless, however, what matters at this stage is that this dispute is common to
 14 every class member. This renewed motion should therefore be granted.

15 **II. FACTUAL BACKGROUND OF THE CARTEL**

16 Defendants in this case are admitted participants in a successful and covert international
 17 price-fixing cartel aimed at artificially raising the prices of LIBs, including batteries incorporated
 18 into consumer products sold in the United States. Following an investigation by the United States
 19 Department of Justice (“DOJ”), defendants Sanyo and LG Chem pled guilty to criminal violations
 20 of the Sherman Antitrust Act.¹⁷ The Sanyo Plea Agreement named Panasonic as a co-
 21 conspirator.¹⁸ Both Sanyo and LG Chem admitted that they “participated in a conspiracy . . . the
 22 primary purpose of which was to fix the prices of cylindrical lithium ion battery cells sold in the

24
 25 ¹⁴ See, e.g., Leamer I ¶ 122-25, fig.44; Haider I ¶ 26; see also Am. Sheen Decl. Ex. 4 (Damages per Notebook Including a 3-month Delay in Pass-Through), Ex. 3 (Damages per Notebook).

26 ¹⁵ Am. Sheen Decl. Ex. 9 (Leamer Dep.) 894:19-895:3; see also Leamer I ¶ 91, figs.35-36.

27 ¹⁶ However, as set forth in the accompanying motion to exclude Dr. Haider's testimony, that
 28 disagreement is without basis in fact or economics.

¹⁷ See Am. Sheen Decl. Ex. 39 (Sanyo Plea), Ex. 40 (LG Chem Plea).

¹⁸ See Am. Sheen Decl. Ex. 39 (Sanyo Plea) at 3.

1 United States and elsewhere for use in notebook computer battery packs.”¹⁹ They further
 2 admitted that between April 2007 and September 2008, they sold more than \$40 million of price-
 3 fixed battery cells for use in notebook computers by U.S. customers.²⁰ An additional defendant
 4 has cooperated with the federal government in its investigation and prosecution of the LIB cartel
 5 as a participant in the DOJ’s leniency program.

6 [REDACTED]
 7 [REDACTED]²¹ [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]²² [REDACTED]
 11 [REDACTED]
 12 [REDACTED]²³ [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]²⁴ [REDACTED]
 16 [REDACTED]²⁵ [REDACTED]
 17 [REDACTED]²⁶ [REDACTED]

18 ¹⁹ Am. Sheen Decl. Ex. 39 (Sanyo Plea) at 3-4, Ex. 40 (LG Chem Plea) at 3.

19 ²⁰ Am. Sheen Decl. Ex. 39 (Sanyo Plea) at 4 (“approximately \$36,839,000”), Ex. 40 (LG Chem
 Plea) at 4 (“at least \$3,359,000”).

20 ²¹ See, e.g., Am. Sheen Decl. Ex. 15 (PANA0026382) [REDACTED], Ex. 16 (PANA0026433) ([REDACTED]), Ex. 17 (PANA0026500) [REDACTED], Ex. 18 (PANA0026502E) ([REDACTED]); Ex. 19 (PANA0026505) [REDACTED], Ex. 20 (PANA0026507) ([REDACTED]), Ex. 22 (SANYO0670262) ([REDACTED]), Ex. 23 (SANYO0670265) ([REDACTED]), Ex. 24 (SANYO0670404) ([REDACTED]), Ex. 25 (SANYO0670406) ([REDACTED]), Ex. 26 (SANYO0670407) ([REDACTED]), Ex. 27 (SANYO0670410) ([REDACTED]); Ex. 31 (SANYO0670308) ([REDACTED]), Ex. 32 (SNA0338909) ([REDACTED]).

22 Am. Sheen Decl. Ex. 24 (SANYO0670404) ([REDACTED]).

23 Am. Sheen Decl. Ex. 17 (PANA0026500) ([REDACTED]).

24 Am. Sheen Decl. Ex. 54 (LGC-MDL0001873) at 1874; *see also* Am. Sheen Decl. Ex. 42 (TSB-LIB-00006527E) ([REDACTED]).

25 Am. Sheen Decl. Ex. 44 (SDI-B-000005140E).

26 See, e.g., Am. Sheen Decl. Ex. 46 (PANA0013754) ([REDACTED]), Ex. 52 (PANA-C000054124E) ([REDACTED]), Ex. 45 (P-DOJ0000006) ([REDACTED]), Ex. 47 (SANYO00552924E) at 2625E ([REDACTED]).

1 [REDACTED]
2 [REDACTED]²⁸ [REDACTED]
3 [REDACTED] [REDACTED]²⁹:
4 [REDACTED]
5 [REDACTED]

6 [REDACTED]³¹ [REDACTED]
7 [REDACTED]³² [REDACTED]
8 [REDACTED]³⁴ [REDACTED]³⁵

9 **III. PROCEDURAL BACKGROUND**

10 **A. First Class Certification Order**

11 IPPs first moved to certify a nationwide class of indirect purchasers in January 2016. In

12 *Footnote continued from previous page*
13 Ex. 48 (NEC00763074E) [REDACTED] Ex. 49 (SANYO0552987E) [REDACTED] Ex. 50
14 (SANYO00553033E) [REDACTED]; Ex. 11 [REDACTED] 45:23-24 [REDACTED]).

15 ²⁷ Am. Sheen Decl. Ex. 51 (PANA-C000173988E) (Panasonic email [REDACTED])

16 [REDACTED].

17 ²⁸ See Am. Sheen Decl. Ex. 55 (LGC-MDL-0002004) at 2007, 2010, 2011 [REDACTED]

18 [REDACTED].

19 ²⁹ Am. Sheen Decl. Ex. 43 (LGC-MDL0000001) at 0006.

20 ³⁰ See Class Cert. Mot. I § I.5.

21 ³¹ See, e.g., Am. Sheen Decl. Ex. 53 (PNA0060555) [REDACTED]

22 (Panasonic PPT [REDACTED] "Ex. 56 (PANA-C000091865E) [REDACTED]),
23 Ex. 57 (LGC-MDL0002261) [REDACTED] [REDACTED]).

24 ³² See, e.g., Am. Sheen Decl. Ex. 41 (TSB-LIB-00003333E) at TSB-LIB-00003335E ([REDACTED] Ex. 52 (PANA-
25 C000054124) ([REDACTED]) Ex. 30 (S-DOJ0085572) [REDACTED]).

26 ³³ See, e.g., Am. Sheen Decl. Ex. 29 (SANYO-C000869823) ([REDACTED] Ex. 21

27 (P-DOJ10000017) ([REDACTED]).

28 ³⁴ See *supra* note 26.

29 ³⁵ See, e.g., Am. Sheen Decl. Ex. 28 (SANYO-C000603817) ([REDACTED])

30 [REDACTED]).

1 denying the motion without prejudice, the Court found that IPPs had satisfied the elements of
 2 Federal Rule of Civil Procedure Rule 23(a).³⁶ With respect to Rule 23(b)(3), the Court found no
 3 dispute about the applicability of class-wide evidence of the existence of a conspiracy to fix
 4 battery prices.³⁷ The Court accepted the opinions of IPPs' experts, Dr. Rosa Abrantes-Metz and
 5 Dr. Leamer, almost in their entirety, but it concluded that IPPs failed to meet Rule 23(b)(3)'s
 6 predominance requirement with respect to class-wide evidence of impact and damages.³⁸
 7 Specifically, the Court identified three areas requiring further analysis: (i) the effect of packers on
 8 pass-through to the Class; (ii) the role of rebates, bundling, and discounts on pass-through; and
 9 (iii) the influence of focal point pricing and adjustments to quality rather than cost.³⁹

10 The Court also found, with respect to the application of California law to a nationwide
 11 class, that: (i) applying California law was constitutional; (ii) the relevant laws of *Illinois Brick*
 12 repealer and non-repeater states present a true conflict; and (iii) the interests of non-repeater states
 13 would be impaired more significantly than California's interests by applying California law to
 14 non-repeater states.⁴⁰

15 **B. Second Class Certification Order**

16 In January 2018, IPPs filed a renewed motion to certify a class of consumers from *Illinois*
 17 *Brick* repealer states. [REDACTED]

18 [REDACTED]

19 [REDACTED]⁴¹ [REDACTED]

20 [REDACTED]

21 [REDACTED];⁴² [REDACTED]

22 [REDACTED]

23 _____
 24 ³⁶ Class Cert. Order I at 11-12.

25 ³⁷ *Id.* at 13 n.6.

26 ³⁸ *Id.* at 13-19.

³⁹ *Id.* at 19.

⁴⁰ *Id.* at 21-24.

27 ⁴¹ Class Cert. Reply II at 8 n.17 (citing Am. Sheen Decl. Ex. 33 (SONY-LIB-000818909) at 910
 and Leamer III n.48, figs.2-4, 26); Leamer IV ¶¶ 38, 45-51, figs.7-12; *see also* Leamer I ¶ 125.

28 ⁴² Class Cert. Order II at 13; Leamer III ¶¶ 33, 35, 40-42, fig.8.

1 [REDACTED].⁴³

2 On March 5, 2018, the Court denied IPPs' second motion on the issue of focal point
 3 pricing. The Court concluded that Dr. Leamer's additional analysis did "not adequately account
 4 for the effects of focal point pricing, and therefore fail[ed] to yield reliable conclusions."⁴⁴ In
 5 particular, the Court explained that IPPs did not sufficiently explain: (i) how focal point pricing
 6 affected pass-through for OEMs and retailers; (ii) how focal point pricing led to quality
 7 adjustments in the finished products; and (iii) how those quality reductions, rather than price
 8 increases, affected the reliability of Dr. Leamer's prior overcharge pass-through regressions.⁴⁵
 9 The Court struck Dr. Leamer's regressions concerning camcorder and power tool pass-through.⁴⁶
 10 The Court did not address Dr. Leamer's opinions about packers and the effect of bundling,
 11 rebates, and discounts on pass-through.

12 **IV. LEGAL STANDARD**

13 To certify a class under Rule 23(b)(3), a court must find that common questions of law or
 14 fact predominate over questions affecting only individual class members.⁴⁷ But it cannot and
 15 must not decide the answers to those questions.⁴⁸ Once a question and the evidence addressing it
 16 have been identified as common to the class, the trial court should delve no further into the
 17 merits, because to do so invades the province of the jury.⁴⁹

18 **V. ARGUMENT**

19 Focusing on the core group of consumers harmed by this conspiracy, IPPs seek to certify
 20 smaller classes that have been narrowed by time period and the type of product purchased by the
 21 consumer. As the Court previously held, each of the elements of Rule 23(a) is satisfied.⁵⁰ That
 22 conclusion applies with equal force with respect to the narrowed class definitions IPPs now

23 ⁴³ Leamer IV ¶¶ 12-13, figs.1-3.

24 ⁴⁴ Class Cert. Order II at 4.

25 ⁴⁵ Class Cert. Order II at 5-8.

26 ⁴⁶ Class Cert. Order II at 1-2.

27 ⁴⁷ Fed. R. Civ. P. 23(b)(3); *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 460
 28 (2013); *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

⁴⁸ *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1049 (2016).

⁴⁹ *Id.*; *Amgen*, 568 U.S. at 468.

⁵⁰ Class Cert. Order I at 10-12.

1 propose.⁵¹ The only material issue remaining with respect to class certification, then, is whether
 2 IPPs have established that antitrust impact and damages are common questions susceptible to
 3 common proof.

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] Panasonic and Sanyo have not disputed this point
 9 directly—they have not argued, for example, that any level of the distribution chain is *not*
 10 characterized by high levels of competition and complete pass-through of costs over time.
 11 Rather, they have focused on an irrelevant hypothetical question: would focal point prices have
 12 affected the pass-through of a sudden, one-time cost increase of a few cents or dollars?

13 Notwithstanding its irrelevance, this question is—still—a common one, and the fact that
 14 there may be a dispute about the answer (or even the proper question) is not a basis to deny class
 15 certification. Moreover, Defendants’ question is contrary to the facts in this case, which involve a
 16 decade-plus period of collusion, not a one-time price increase. The vast weight of evidence
 17 addressing the true facts overwhelmingly supports the proposition that the entire conspiracy effect
 18 was passed through to consumers over time, [REDACTED]

19 [REDACTED]

20 A. **Dr. Leamer’s Prior Regression Analyses Show Consumers in the Narrowed**
 21 **Class Were Harmed.**

22 As the Court knows, Dr. Leamer conducted 978 regression analyses—the platinum
 23 standard for computing damages to classes in antitrust cases⁵²—showing that the battery

24 ⁵¹ The proposed Class is sufficiently numerous—in the tens of thousands at minimum—such that
 25 joinder would be impracticable. This Court previously held that IPPs made a sufficient showing
 26 to satisfy the typicality argument, and explicitly rejected defendants’ argument that IPPs must (i)
 27 prove class membership, or (ii) show that the claims of individuals who purchase a small number
 of LIB products are not typical of those of institutional entities that purchase such products in
 bulk. Class Cert. Order I at 10-12. Finally, the class representatives “will fairly and adequately
 protect the interests of the class” because they (i) do not have conflicts of interest with the
 proposed Class, and (ii) are represented by qualified counsel. *See Hanlon v. Chrysler Corp.*, 150
 F.3d 1011, 1020 (9th Cir. 1998).

28 ⁵² Class Cert. Order I at 17 n.9 (noting “multi-variable regression is the sort of analysis most

1 overcharges were passed-through to consumers.⁵³ Those analyses stand uncontradicted in any
 2 meaningful way—nobody has performed work showing that the conspiracy did *not* have an effect
 3 or that pass-through did *not* occur. However, those results have increased magnitude, coverage,
 4 and precision with respect to a notebook-only class.

5 Impact of the Conspiracy on Battery Prices. [REDACTED]

6 [REDACTED]
 7 [REDACTED]⁵⁴ [REDACTED]
 8 [REDACTED]
 9 [REDACTED],⁵⁵ [REDACTED]
 10 [REDACTED].⁵⁶ [REDACTED]
 11 [REDACTED]⁵⁷:
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21

23 *Footnote continued from previous page*

24 routinely accepted as the appropriate tool for estimating impact and damages in antitrust cases").

25⁵³ See Leamer III ¶¶ 98-103, fig 27 ([REDACTED]);
 Leamer IV ¶¶ 12-13, figs.1-3 [REDACTED]).

26⁵⁴ Leamer I ¶¶ 77-91, figs.34-36; *see also* Leamer V ¶¶ 86-90, fig.23.

27⁵⁵ *See* Class Cert. Order II at 5.

28⁵⁶ Am. Sheen Decl. Ex. 4 (Damages per Notebook Including a 3-month Delay in Pass-Through);
see also Am. Sheen Decl. Ex. 5 (Damages per Notebook).

⁵⁷ Haider III ¶ 60, ex.3.

1
2
3
4
5
6
7
8
9
10
11
12
13
14

[REDACTED]

15 Quantity of Data Analyzed. [REDACTED]

16 [REDACTED].⁵⁸ [REDACTED]
17 [REDACTED]
18 [REDACTED];⁵⁹ [REDACTED]
19 [REDACTED]
20 [REDACTED],⁶⁰ [REDACTED]
21 [REDACTED].⁶¹ Although defendants criticized Dr. Leamer's work for
22 failing to analyze pass-through at the packer level of the distribution chain, [REDACTED]
23 [REDACTED].⁶²

24 ⁵⁸ Leamer III ¶¶ 96-104, figs.26-30.

25 ⁵⁹ Am. Sheen Decl. Ex. 35

26 [REDACTED], Ex. 36
[REDACTED].

27 ⁶⁰ Am. Sheen Decl. Ex. 37 [REDACTED]

[REDACTED].

28 ⁶¹ Am. Sheen Decl. Ex. 38 ([REDACTED]).

⁶² Leamer IV ¶¶ 38, 47. Packers assemble raw battery cells into battery packs before they are

Footnote continued on next page
IPPS' CORRECTED SECOND RENEWED
MOTION FOR CLASS CERTIFICATION
CASE NO. 13-MD-02420 YGR (DMR)

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] 63 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]. 64

7 Consistent Impact Down the Distribution Chain. In total, [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED] 65 [REDACTED]
11 [REDACTED]
12 [REDACTED] 66

13 The strength and consistency of Dr. Leamer's regression analysis is amplified by the
14 revised class definition, which excludes camcorders and power tools. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]. 67 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED] 68

22
23 *Footnote continued from previous page*
sold to OEMs. Leamer III ¶ 23.

24 63 Am. Sheen Decl. Ex. 33 (SONY-LIB-000818909) at 910; Leamer III ¶ 97 n.48, figs.2-4, 26;
Leamer IV ¶¶ 38, 45-51, figs.7-12.

25 64 Leamer IV app. B.

26 65 Leamer III ¶¶ 98-103, fig.27 [REDACTED]); Leamer IV ¶¶ 12-13, figs.1-3 [REDACTED]

27 66 Leamer III ¶¶ 98, 104, figs.28-30.

28 67 See Leamer III ¶¶ 98, 103 n.49, figs.29-30.

68 See Leamer III figs. 29-30; Leamer IV app. B.

1 Overcharges Were Passed-Through Even for Small Cost Changes and Even in the
2 Presence of Focal Point Pricing. [REDACTED]

3 [REDACTED]
4 [REDACTED].⁶⁹ [REDACTED]
5 [REDACTED]
6 [REDACTED].⁷⁰ [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED].⁷¹ [REDACTED]
10 [REDACTED]
11 [REDACTED].⁷² [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED].⁷³ [REDACTED]
16 [REDACTED].⁷⁴ [REDACTED]

17 Overcharges Were Passed-Through Even with Rebates, Discounts, and Bundling. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED].⁷⁵ [REDACTED]
22 [REDACTED]

23 ⁶⁹ Leamer I ¶¶ 118-121, figs.42-43; Leamer II ¶¶ 119-125, figs.16-17; Leamer IV ¶¶ 55-59,
24 fig.13; Leamer V ¶ 15.

25 ⁷⁰ Leamer I ¶ 121, fig.43; Leamer II ¶ 125, figs.16-17; *see also* Leamer IV ¶ 58, fig.13.

26 ⁷¹ Leamer I ¶¶ 119-121, fig.42; Leamer II ¶¶ 128-130, fig.22; Leamer IV ¶¶ 100-103, fig.24;
27 Leamer V ¶ 15.

28 ⁷² Leamer V ¶ 15.

29 ⁷³ Leamer IV ¶¶ 12-13, figs.1-3 ([REDACTED]); Leamer V ¶ 17.

30 ⁷⁴ *Id.*

31 ⁷⁵ Leamer III ¶¶ 38-39.

1 [REDACTED] ⁷⁶

2 B. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED] ⁷⁸ [REDACTED]

25 [REDACTED]

26 _____

27 ⁷⁶ Leamer III ¶¶ 33, 35, 40-42, fig.8.

28 ⁷⁷ Haider III ¶ 43 (emphasis added).

⁷⁸ Haider III ¶ 34, tbl. F-5.

1 [REDACTED]
2 [REDACTED] 79
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19
20 ⁷⁹ Am Sheen Decl Ex 9 (Leamer Dep) 864:7-865:3 [REDACTED]
21 [REDACTED]), 968:17-971:1 [REDACTED]
22 [REDACTED] See Am Sheen Decl Ex 8
23 (Haider July 31 2018 Dep) 821:1-831:2 249:17-256:15 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED]
 2 [REDACTED] 80
 3 [REDACTED]

4 [REDACTED]
 5 [REDACTED] 81 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED] 82

11 C. **Dr. Leamer's New Analysis and Evidence Addresses This Court's Concerns**
 12 **About the Effects of Focal Point Pricing.**

13 In its Second Class Certification Order, the Court determined that Dr. Leamer's analysis
 14 failed to adequately address how, and by how much, the use of focal point pricing strategies
 15 affected pass-through rates for OEMs and retailers.⁸³ Specifically, the Court stated that Dr.
 16 Leamer's reports did not explain (i) that any finished products actually experienced a quality
 17 reduction, rather than an increase of price, in the presence of focal point pricing; (ii) how the
 18 existence of such quality reductions affected the reliability of Dr. Leamer's prior regression
 19 analyses; and (iii) the effect of focal point pricing on IPPs' ability to demonstrate and quantify
 20 pass-through of the LIB overcharge.⁸⁴ In his latest reports, Dr. Leamer addresses each of the
 21 Court's concerns in turn.

22
 23 ⁸⁰ Am. Sheen Decl. Ex. 9 (Leamer Dep.) at 864:7-21 [REDACTED]
 24 [REDACTED]

25).

26 ⁸¹ Am. Sheen Decl. Ex. 5 [REDACTED], Ex. 9 (Leamer Dep.) 792:16-23, 859:3-
 860:14, 863:9-867:23, 968:17-971:11.

27 ⁸² Am. Sheen Decl. Ex. 9 (Leamer Dep.) 863:12-21.

28 ⁸³ Class Cert. Order II at 5.

⁸⁴ Class Cert. Order II at 6-8.

1 1. **Identifying Actual Quality Reduction Due to the Conspiracy Is**
 2 **Impossible, But New Analysis Shows Quality and Price Trade-Offs**
 3 **Both In and Out of the Conspiracy and for Batteries Specifically.**

4 In its Second Class Certification Order, the Court faulted IPPs for failing to identify “that
 5 any products (and thus the purchasers of those products) actually experienced a quality reduction,
 6 rather than an increase cost, as a result of the alleged price-fixing conspiracy.”⁸⁵ If by that the
 7 Court meant to require that IPPs show how a specific notebook computer would have been
 8 differently configured absent the conspiracy, such an analysis is impossible.⁸⁶ Identifying which
 9 products actually experienced a quality reduction in the absence of a conspiracy would require
 10 projecting with absolute certainty all the product designs for a hypothetical parallel time period—
 11 a time period from 2007 to 2011 in which there was *no* conspiracy.⁸⁷ The data to carry out such
 12 an exercise does not exist because whether a quality reduction actually occurred in the real world
 13 can only be measured against what quality would have prevailed in the but-for, counterfactual
 14 world.⁸⁸ Furthermore, such a requirement misconstrues the way the market and the conspiracy
 15 operated. This case does not allege discrete and separable overcharges imposed at different
 16 periods of time, but rather a continuous price effect that resulted from a decade-plus conspiracy,
 17 all taking place in the context of innovation and product improvement in the consumer electronics
 18 industry.⁸⁹ Therefore, it is impossible to segregate the amount of the overcharge related to
 19 collusion based on a particular price increase. Doing so would undercount the cumulative effect
 20 of the price-fixing over time.⁹⁰ Furthermore, it comes into direct conflict with copious authority
 21 holding that once the elements of the violation have been established, including a penny of
 22 impact, aggregate damages to the class need not be estimated with pinpoint precision.⁹¹

22 ⁸⁵ Class Cert. Order II at 6-7.

23 ⁸⁶ Leamer V ¶ 9.

24 ⁸⁷ Leamer V ¶¶ 9-10.

25 ⁸⁸ *Id.*

26 ⁸⁹ *Id.*

27 ⁹⁰ *Id.*

28 ⁹¹ See *Lambert v. Nutraceutical Corp.*, 870 F.3d 1170, 1182 (9th Cir. 2017), *cert. granted*, 138 S. Ct. 2675 (2018) (“Uncertainty regarding class members’ damages does not prevent certification of a class as long as a valid method has been proposed for calculating those damages.”); *see also In re: High-Tech Emp. Antitrust Litig.*, 985 F. Supp. 2d 1167, 1223-26 (N.D. Cal. 2013) (approving aggregate damages model); *In re: Cathode Ray Tube (CRT) Antitrust Litig.*, No. C-07-

1 Although identifying how specific products suffered reduced quality due to the conspiracy
 2 is impossible, Dr. Leamer has conducted two new analyses that respond to the Court's concern.

3 Comparison of Pass-Through Rates During and Outside the Conspiracy Period. [REDACTED]

4 [REDACTED]
 5 [REDACTED].⁹² [REDACTED]
 6 [REDACTED]
 7 [REDACTED].⁹³ [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED] Thus, there is no need to analyze pass-through separately
 12 vis-à-vis the conspiracy as opposed to "ordinary" changes in cost or quality. This addresses the
 13 first part of the Court's concern: that pass through might somehow have been different for
 14 conspiracy overcharges. It was not.

15 New Analysis of Battery Cell Capacity and Price. [REDACTED]

16 [REDACTED]
 17 While it is not possible to say that a particular notebook would have had a particularly different
 18 battery but-for the conspiracy, [REDACTED]

19 [REDACTED]⁹⁴ [REDACTED]
 20 [REDACTED] [REDACTED]
 21 [REDACTED].⁹⁶

22 *Footnote continued from previous page*

5944-SC, 2013 WL 5391159, at *5-8 (N.D. Cal. Sept. 24, 2013) (approving aggregate damages
 23 model for showing injury); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, MDL No. 1827, 2012
 24 WL 253298, at *5 (N.D. Cal. Jan. 26, 2012) ("the use of aggregate damages in antitrust cases has
 25 been approved numerous times"); *In re Static Random Access Memory (SRAM) Antitrust Litig.*,
 26 No. C07-01819 CW, 2008 WL 4447592, at *5-7 (N.D. Cal. Sept. 29, 2008).

27 ⁹² Leamer V ¶¶ 76-78, fig.12.

28 ⁹³ Leamer V ¶ 78, fig.12.

⁹⁴ Leamer V ¶¶ 67-75, fig.9.

⁹⁵ Leamer V ¶ 70.

⁹⁶ Leamer V ¶ 74.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED].⁹⁸ [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED].⁹⁹ [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED].¹⁰⁰ [REDACTED]
15 [REDACTED].¹⁰¹ [REDACTED]
16 [REDACTED].¹⁰² [REDACTED]
17 [REDACTED]
18 [REDACTED].¹⁰³
19 [REDACTED]
20 [REDACTED]
21 [REDACTED].¹⁰⁴ [REDACTED]
22 [REDACTED].¹⁰⁵

23 ⁹⁷ Leamer V ¶ 69.

24 ⁹⁸ Leamer V ¶ 70.

25 ⁹⁹ Leamer V ¶¶ 71-72, figs.9-10.

¹⁰⁰ Leamer V ¶ 73.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ Leamer V ¶ 74.

¹⁰⁴ Leamer V ¶ 75, fig.11.

¹⁰⁵ *Id.*

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED].¹⁰⁶ [REDACTED]
 4 [REDACTED].¹⁰⁷ [REDACTED]
 5 [REDACTED]

6 This analysis of the relationship of battery cost and battery capacity addresses the second
 7 concern of the Court, specifically the desire to see evidence of the quality-adjustment process
 8 working at the level of particular components. This is that proof.

9 There is no tension between focal point prices, quality adjustment, and price-based pass
 10 through of costs. The Court also requested clarification about the implications of focal point
 11 prices and quality adjustment for the total cost pass-through regressions.¹⁰⁸ The answer is that all
 12 three concepts are facts of life in consumer electronics markets subject to the incredible force of
 13 competition in those markets. The key is to remember that Dr. Leamer's work addresses long-
 14 term pass-through effects, which is consistent with the long-term price effect of a decade-plus
 15 conspiracy on LIB prices. [REDACTED]

16 [REDACTED]¹⁰⁹ [REDACTED]
 17 [REDACTED]¹¹⁰.
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED].¹¹¹ [REDACTED]
 23 [REDACTED]

24 _____
 25 ¹⁰⁶ *Id.*

26 ¹⁰⁷ *Id.*

27 ¹⁰⁸ Class Cert. Order II at 7-8.

28 ¹⁰⁹ Leamer V ¶¶ 6, 8-12, 14, 15.

¹¹⁰ Leamer IV ¶¶ 12-13, figs.1-3.

¹¹¹ See Leamer V ¶ 12.

1 [REDACTED] ¹¹² [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] ¹¹³ [REDACTED]6 [REDACTED] ¹¹⁴7 2. **Additional Testimony, Documents, and Data Analysis Strengthen the**
8 **Overall Evidence of Quality Adjustment as a Response to Focal Point**
9 **Prices.**

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] ¹¹⁵ [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 ¹¹² Am. Sheen Decl. Ex. 7 (Gregorczyk Dep.) 31:19-22 ([REDACTED]
19 [REDACTED]; see also *In re Optical Disk Drive Antitrust*
20 *Litig.* ("ODDS"), No. 3:10-MD-2143 RS, 2016 WL 467444, at *8 (N.D. Cal. Feb. 8, 2016) ("[I]n
a cost-declining market, competition will generally drive prices down to costs.").21 ¹¹³ Leamer V ¶¶ 11-35, 41-66 figs 2-8; see also Am. Sheen Decl. Ex. 12 ([REDACTED] 28:20-
22)

Ex. 6 (

132:23-33, 33:3-10

22 [REDACTED] Ex. 12 (18:6-13

Ex. 7 (

140:20-24 (

23 [REDACTED].
24 ¹¹⁴ Leamer V ¶¶ 8, 11-14; see also ODDS, 2016 WL 467444, at *8 ("[I]n competitive markets,
25 profit-maximizing behavior virtually always passes on cost-savings in full into lower prices")

26 Leamer III ¶ 14.

27 ¹¹⁵ Leamer V ¶¶ 46-52; see also Am. Sheen Decl. Ex. 6 (Greenwood Dep.) 16:21-17:13, 19:1-
28 20:5, 24:18-23, 29:20-30:8, 31:15-17, 32:4-22, 33:3-10; Ex. 7 (Gregorczyk Dep.) 20:1-5, 23:3-15,
25:3-27:9, 30:22-31:2, 31:19-22, 32:15-18; Ex. 12 (Wagner Dep.) 21:11-18, 28:5-14, 28:20-22.

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] ¹¹⁶ [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED] ¹¹⁸ [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED] ¹¹⁹ [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED] ¹²⁰ [REDACTED]

17 [REDACTED]

18 [REDACTED] ¹²¹ [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

¹¹⁶ Am. Sheen Decl. Ex. 6 ([REDACTED]) 33:3-10; *see also* ODDs, 2016 WL 467444, at *8 (“[I]f a firm tries to keep a cost reduction for itself – to increase margins over costs – other firms which also receive similar cost reductions will lower their prices (passing on the cost reductions) to siphon market share from the firm(s) which do not pass-on costs reductions.”).

¹¹⁷ Am. Sheen Decl. Ex. 6 ([REDACTED]) 22:7-23.

¹¹⁸ *Id.* 31:15-17

¹¹⁹ *Id.* 24:21-24.

¹²⁰ *Id.* 19:25-20:5

¹²¹ [REDACTED]

¹²¹ *See, e.g.*, Am. Sheen Decl. Ex. 7 ([REDACTED]) 30:4-9 [REDACTED]

1 [REDACTED]

2 [REDACTED] 122 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED] 123

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] 124 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] 125 [REDACTED]

13 [REDACTED]

14 [REDACTED] 126

15 Documentary evidence confirms the inverse relationship between component costs and
 16 product quality. [REDACTED]

17 [REDACTED]

18 [REDACTED] 127 For example, [REDACTED]

19 [REDACTED];

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 *Footnote continued from previous page*

24 [REDACTED] (objection omitted)).

25 ¹²² *Id.* 30:22-31:2.

26 ¹²³ *Id.* 25:3-27:9.

27 ¹²⁴ Am. Sheen Decl. Ex. 10 (Niko Dep.) 41:3-41:11.

28 ¹²⁵ *Id.* 43:10-19.

¹²⁶ Am. Sheen Decl. Ex. 8 (Haider Nov. 14, 2017 Dep.) 199:4-8.

¹²⁷ See Leamer V ¶ 53-57, fig.2.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED] 128
5 In other documents, [REDACTED] 129
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED] 130 [REDACTED]
10 [REDACTED]
11 [REDACTED] 131 [REDACTED]
12 [REDACTED]
13 [REDACTED] 132 [REDACTED]
14 [REDACTED] 133 [REDACTED]
15 [REDACTED]
16 [REDACTED] 134 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED] 135 [REDACTED]
21 [REDACTED]

22 _____
23 ¹²⁸ Am. Sheen Decl. Ex. 34 (AACTOSH000026643).
24 ¹²⁹ Am. Sheen Decl. Ex. 14 (AACTOSH000046013); Ex. 34 (AACTOSH000026643) [REDACTED]
25 [REDACTED]; Ex. 13 (AACTOSH000022424) ([REDACTED]
26 [REDACTED]).

27 ¹³⁰ Leamer V ¶¶ 58-66, figs.3-7.

28 ¹³¹ Leamer V ¶ 58, fig.3.

¹³² Leamer V ¶¶ 59-60, fig.5.

¹³³ Leamer V fig.5.

¹³⁴ Leamer V ¶¶ 61-66, figs.6-7.

¹³⁵ Am. Sheen Decl. Ex. 3 (Damages per Notebook).

1 [REDACTED]

2 [REDACTED]

3 **VI. CONCLUSION**

4 The new proposed class definitions—narrowed by time period and product—strengthen
 5 IPPs’ showing that defendants’ price-fixing of batteries harmed consumers. Taken together, Dr.
 6 Leamer’s new evidence confirms that defendants’ focal point pricing theory does not affect the
 7 reliability or the substance of his core conclusion: the long-term price effect of the conspiracy was
 8 passed down every step in the distribution chain and borne by consumer at a rate of at least 100
 9 percent. Most importantly, Dr. Leamer’s analysis makes clear that common issues of law and
 10 fact not only exist but predominate in resolving IPPs’ claims on a class-wide basis. The existence
 11 of a reliable, class-wide methodology for proving antitrust impact and damages is enough to
 12 certify the class under Rule 23(b)(3). To the extent a legitimate dispute exists among experts on
 13 the common answer to a common question, such a dispute is reserved for the jury. For the
 14 foregoing reasons, the renewed motion should be granted.

15 Dated: August 15, 2018

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

17 By: /s/ Brendan P. Glackin

18 BRENDAN P. GLACKIN

19 Elizabeth J. Cabraser (SBN 083151)
 20 Brendan P. Glackin (SBN 199643)
 21 Lin Y. Chan (SBN 255027)
 22 Michael K. Sheen (SBN 288284)
 23 Abbye R. Klamann (SBN 311112)
 24 275 Battery Street, 29th Floor
 25 San Francisco, CA 94111-3339
 Telephone: (415) 956-1000
 Facsimile: (415) 956-1008
 ecabraser@lchb.com
 bglackin@lchb.com
 lchan@lchb.com
 msheen@lchb.com
 aklamann@lchb.com

1 Dated: August 15, 2018

HAGENS BERMAN SOBOL SHAPIRO LLP

2

3

By: /s/ Shana E. Scarlett

4

SHANA E. SCARLETT

5

Steve W. Berman (*Pro Hac Vice*)
Jeff D. Friedman (SBN 173886)
Shana E. Scarlett (SBN 217895)
Benjamin J. Siegel (SBN 256260)
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
steve@hbsslaw.com
jefff@hbsslaw.com
shanas@hbsslaw.com
bens@hbsslaw.com

6

7

8

9

10

Dated: August 15, 2018

COTCHETT, PITRE & McCARTHY, LLP

11

12

13

14

By: /s/ Adam J. Zapala

ADAM J. ZAPALA

15

16

17

18

19

Joseph W. Cotchett (SBN 36324)
Adam J. Zapala (SBN 245748)
Tamarah Prevost (SBN 313422)
840 Malcolm Road
Burlingame, CA 94010
Telephone: (650) 697-6000
Facsimile: (650) 697-0577
jcotchett@cpmlegal.com
azapala@cpmlegal.com
tprevost@cpmlegal.com

20

21

22

23

24

25

26

27

28

***Interim Co-Lead Class Counsel
For Indirect Purchaser Plaintiffs***

ATTESTATION

2 I, Brendan P. Glackin, hereby attest, pursuant to Northern District of California, Local
3 Rule 5-1(i)(3) that concurrence in the filing of this document has been obtained from each of the
4 signatories hereto.

5

6 || Dated: August 15, 2018

By: /s/ Brendan P. Glackin
BRENDAN P. GLACKIN

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28